

FIRST DIVISION

[G.R. No. 144169. March 28, 2001]

KHE HONG CHENG, alias FELIX KHE, SANDRA JOY KHE and RAY STEVEN KHE, petitioners, vs. COURT OF APPEALS, HON. TEOFILO GUADIZ, RTC 147, MAKATI CITY and PHILAM INSURANCE CO., INC., respondents.

DECISION

KAPUNAN, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45, seeking to set aside the decision of the Court of Appeals dated April 10, 2000 and its resolution dated July 11, 2000 denying the motion for reconsideration of the aforesaid decision. The original complaint that is the subject matter of this case is an *accion pauliana*-- an action filed by Philam Insurance Company, Inc. (respondent Philam) to rescind or annul the donations made by petitioner Khe Hong Cheng allegedly in fraud of creditors. The main issue for resolution is whether or not the action to rescind the donations has already prescribed. While the first paragraph of Article 1389 of the Civil Code states: The action to claim rescission must be commenced within four years... the question is, from which point or event does this prescriptive period commence to run?

The facts are as follows:

Petitioner Khe Hong Cheng, alias Felix Khe, is the owner of Butuan Shipping Lines. It appears that on or about October 4, 1985, the Philippine Agricultural Trading Corporation shipped on board the vessel M/V PRINCE ERIC, owned by petitioner Khe Hong Cheng, 3,400 bags of copra at Masbate, Masbate, for delivery to Dipolog City, Zamboanga del Norte. The said shipment of copra was covered by a marine insurance policy issued by American Home Insurance Company (respondent Philam's assured). M/V PRINCE ERIC, however, sank somewhere between Negros Island and Northeastern Mindanao, resulting in the total loss of the shipment. Because of the loss, the insurer, American Home, paid the amount of P354,000.00 (the value of the copra) to the consignee.

Having been subrogated into the rights of the consignee, American Home instituted Civil Case No. 13357 in the Regional Trial Court (RTC) of Makati, Branch 147 to recover the money paid to the consignee, based on breach of contract of carriage. While the case was still pending, or on December 20, 1989, petitioner Khe Hong Cheng executed deeds of donations of parcels of land in favor of his children, herein co-petitioners Sandra Joy and Ray Steven. The parcel of land with an area of 1,000 square meters covered by Transfer Certificate of Title (TCT) No. T-3816 was donated to Ray Steven. Petitioner Khe Hong Cheng likewise donated in favor of Sandra Joy two (2) parcels of land located in Butuan City, covered by TCT No. RT-12838. On the basis of said deeds, TCT No. T-3816 was cancelled and in lieu thereof, TCT No. T-5072 was issued in favor of Ray Steven and TCT No. RT-12838 was cancelled and in lieu thereof, TCT No. RT-21054 was issued in the name of Sandra Joy.

The trial court rendered judgment against petitioner Khe Hong Cheng in Civil Case No. 13357 on December 29, 1993, four years after the donations were made and the TCTs were registered in the donees names. The decretal portion of the aforesaid decision reads:

Wherefore, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant, ordering the latter to pay the former:

1) the sum of P354,000.00 representing the amount paid by the plaintiff to the Philippine Agricultural Trading Corporation with legal interest at 12% from the time of the filing of the complaint in this case;

2) the sum of P50,000.00 as attorneys fees;

3) the costs.^[1]

After the said decision became final and executory, a writ of execution was forthwith issued on September 14, 1995. Said writ of execution, however, was not served. An *alias* writ of execution was, thereafter, applied for and granted in October 1996. Despite earnest efforts, the sheriff found no property under the name of Butuan Shipping Lines and/or petitioner Khe Hong Cheng to levy or garnish for the satisfaction of the trial court's decision. When the sheriff, accompanied by counsel of respondent Philam, went to Butuan City on January 17, 1997, to enforce the *alias* writ of execution, they discovered that petitioner Khe Hong Cheng no longer had any property and that he had conveyed the subject properties to his children.

On February 25, 1997, respondent Philam filed a complaint with the Regional Trial Court of Makati City, Branch 147, for the rescission of the deeds of donation executed by petitioner Khe Hong Cheng in favor of his children and for the nullification of their titles (Civil Case No. 97-415). Respondent Philam alleged, *inter alia*, that petitioner Khe Hong Cheng executed the aforesaid deeds in fraud of his creditors, including respondent Philam.^[2]

Petitioners subsequently filed their answer to the complaint *a quo*. They moved for its dismissal on the ground that the action had already prescribed. They posited that the registration of the deeds of donation on December 27, 1989 constituted constructive notice and since the complaint *a quo* was filed only on February 25, 1997, or more than four (4) years after said registration, the action was already barred by prescription.^[3]

Acting thereon, the trial court denied the motion to dismiss. It held that respondent Philam's complaint had not yet prescribed. According to the trial court, the prescriptive period began to run only from December 29, 1993, the date of the decision of the trial court in Civil Case No. 13357.^[4]

On appeal by petitioners, the CA affirmed the trial court's decision in favor of respondent Philam. The CA declared that the action to rescind the donations had not yet prescribed. Citing Articles 1381 and 1383 of the Civil Code, the CA basically ruled that the four year period to institute the action for rescission began to run only in January 1997, and not when the decision in the civil case became final and executory on December 29, 1993. The CA reckoned the accrual of respondent Philam's cause of action on January 1997, the time when it first learned that the judgment award could not be satisfied because the judgment creditor, petitioner Khe Hong Cheng, had no more properties in his name. Prior thereto, respondent Philam had not yet exhausted all legal means for the satisfaction of the decision in its favor, as prescribed under Article 1383 of the Civil Code.^[5]

The Court of Appeals thus denied the petition for *certiorari* filed before it, and held that the trial court did not commit any error in denying petitioners' motion to dismiss. Their motion for reconsideration was likewise dismissed in the appellate court's resolution dated July 11, 2000.

Petitioners now assail the aforesaid decision and resolution of the CA alleging that:

I

PUBLIC RESPONDENT GRAVELY ERRED AND ACTED IN GRAVE ABUSE OF DISCRETION WHEN IT DENIED THE PETITION TO DISMISS THE CASE BASED ON THE GROUND OF PRESCRIPTION.

II

PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PRESCRIPTION BEGINS TO RUN WHEN IN JANUARY 1997 THE SHERIFF WENT TO BUTUAN CITY IN SEARCH OF PROPERTIES OF PETITIONER FELIX KHE CHENG TO SATISFY THE JUDGMENT IN CIVIL CASE NO. 13357 AND FOUND OUT THAT AS EARLY AS DEC. 20, 1989, PETITIONERS KHE CHENG EXECUTED THE DEEDS OF DONATIONS IN FAVOR OF HIS CO-PETITIONERS THAT THE ACTION FOR RESCISSION ACCRUED BECAUSE PRESCRIPTION BEGAN TO RUN WHEN THESE DONATIONS WERE REGISTERED WITH THE REGISTER OF

DEEDS IN DECEMBER 1989, AND WHEN THE COMPLAINT WAS FILED ONLY IN FEBRUARY 1997, MORE THAN FOUR YEARS HAVE ALREADY LAPSED AND THEREFORE, IT HAS ALREADY PRESCRIBED.^[6]

Essentially, the issue for resolution posed by petitioners is this: *When did the four (4) year prescriptive period as provided for in Article 1389 of the Civil Code for respondent Philam to file its action for rescission of the subject deeds of donation commence to run?*

The petition is without merit.

Article 1389 of the Civil Code simply provides that, The action to claim rescission must be commenced within four years. Since this provision of law is silent as to when the prescriptive period would commence, the general rule, i.e, from the moment the cause of action accrues, therefore, applies. Article 1150 of the Civil Code is particularly instructive:

Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

Indeed, this Court enunciated the principle that it is the legal possibility of bringing the action which determines the starting point for the computation of the prescriptive period for the action.^[7] Article 1383 of the Civil Code provides as follows:

Art. 1383. An action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

It is thus apparent that an action to rescind or an *accion pauliana* must be of last resort, availed of only after all other legal remedies have been exhausted and have been proven futile. For an *accion pauliana* to accrue, the following requisites must concur:

1) That the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; 2) That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; 3) That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person; 4) That the act being impugned is fraudulent; 5) That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.^[8] (Emphasis ours)

We quote with approval the following disquisition of the CA on the matter:

An *accion pauliana* accrues only when the creditor discovers that he has no other legal remedy for the satisfaction of his claim against the debtor other than an *accion pauliana*. The *accion pauliana* is an action of a last resort. For as long as the creditor still has a remedy at law for the enforcement of his claim against the debtor, the creditor will not have any cause of action against the creditor for rescission of the contracts entered into by and between the debtor and another person or persons. Indeed, an *accion pauliana* presupposes a judgment and the issuance by the trial court of a writ of execution for the satisfaction of the judgment and the failure of the Sheriff to enforce and satisfy the judgment of the court. It presupposes that the creditor has exhausted the property of the debtor. The date of the decision of the trial court against the debtor is immaterial. What is important is that the credit of the plaintiff antedates that of the fraudulent alienation by the debtor of his property. After all, the decision of the trial court against the debtor will retroact to the time when the debtor became indebted to the creditor.^[9]

Petitioners, however, maintain that the cause of action of respondent Philam against them for the rescission of the deeds of donation accrued as early as December 27, 1989, when petitioner Khe Hong Cheng registered the subject conveyances with the Register of Deeds. Respondent Philam allegedly had constructive knowledge of the execution of said deeds under Section 52 of Presidential Decree No. 1529, quoted *infra*, as follows:

Section 52. Constructive knowledge upon registration. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.

Petitioners argument that the Civil Code must yield to the Mortgage and Registration Laws is misplaced, for in no way does this imply that the specific provisions of the former may be all together ignored. To count the four year prescriptive period to rescind an allegedly fraudulent contract from the date of registration of the conveyance with the Register of Deeds, as alleged by the petitioners, would run counter to Article 1383 of the Civil Code as well as settled jurisprudence. It would likewise violate the third requisite to file an action for rescission of an allegedly fraudulent conveyance of property, i.e., the creditor has no other legal remedy to satisfy his claim.

An *accion pauliana* thus presupposes the following: 1) A judgment; 2) the issuance by the trial court of a writ of execution for the satisfaction of the judgment, and 3) the failure of the sheriff to enforce and satisfy the judgment of the court. It requires that the creditor has exhausted the property of the debtor. The date of the decision of the trial court is immaterial. What is important is that the credit of the plaintiff antedates that of the fraudulent alienation by the debtor of his property. After all, the decision of the trial court against the debtor will retroact to the time when the debtor became indebted to the creditor.

Tolentino, a noted civilist, explained:

xxx[T]herefore, credits with suspensive term or condition are excluded, because the *accion pauliana* presupposes a judgment and unsatisfied execution, which cannot exist when the debt is not yet demandable at the time the rescissory action is brought. Rescission is a subsidiary action, which presupposes that the creditor has exhausted the property of the debtor which is impossible in credits which cannot be enforced because of a suspensive term or condition.

While it is necessary that the credit of the plaintiff in the *accion pauliana* must be prior to the fraudulent alienation, the date of the judgment enforcing it is immaterial. Even if the judgment be subsequent to the alienation, it is merely declaratory with retroactive effect to the date when the credit was constituted.^[10]

These principles were reiterated by the Court when it explained the requisites of an *accion pauliana* in greater detail, to wit:

The following successive measures must be taken by a creditor before he may bring an action for rescission of an allegedly fraudulent sale: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (*accion subrogatoria*); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (*accion pauliana*). Without availing of the first and second remedies, i.e., exhausting the properties of the debtor or subrogating themselves in Francisco Baregs transmissible rights and actions, petitioners simply undertook the third measure and filed an action for annulment of sale. This cannot be done.^[11] (Emphasis ours)

In the same case, the Court also quoted the rationale of the CA when it upheld the dismissal of the *accion pauliana* on the basis of lack of cause of action:

In this case, plaintiffs appellants had not even commenced an action against defendants-appellees Bareng for the collection of the alleged indebtedness. Plaintiffs-appellants had not even tried to exhaust the property of defendants-appellees Bareng. Plaintiffs-appellants, in seeking the rescission of the contracts of sale entered into between defendants-appellees, failed to show and prove that defendants-appellees Bareng had no other property, either at the time of the sale or at the time this action was filed, out of which they could have collected this (sic) debts. (Emphasis ours)

Even if respondent Philam was aware, as of December 27, 1989, that petitioner Khe Hong Cheng had executed the deeds of donation in favor of his children, the complaint against Butuan Shipping Lines and/or petitioner Khe Hong Cheng was still pending before the trial court. Respondent Philam had no inkling, at the time, that the trial court's judgment would be in its favor and further, that such judgment would not be satisfied due to the deeds of donation executed by petitioner Khe Hong Cheng during the pendency of the case. Had respondent Philam filed his complaint on December 27, 1989, such complaint would have been dismissed for being premature. Not only were all other legal remedies for the enforcement of respondent Philam's claims not yet exhausted at the time the deeds of donation were executed and registered. Respondent Philam would also not have been able to prove then that petitioner Khe Hong Cheng had no more property other than those covered by the subject deeds to satisfy a favorable judgment by the trial court.

It bears stressing that petitioner Khe Hong Cheng even expressly declared and represented that he had reserved to himself property sufficient to answer for his debts contracted prior to this date:

That the DONOR further states, for the same purpose as expressed in the next preceding paragraph, that this donation is not made with the object of defrauding his creditors having reserved to himself property sufficient to answer his debts contracted prior to this date.^[12]

As mentioned earlier, respondent Philam only learned about the unlawful conveyances made by petitioner Khe Hong Cheng in January 1997 when its counsel accompanied the sheriff to Butuan City to attach the properties of petitioner Khe Hong Cheng. There they found that he no longer had any properties in his name. It was only then that respondent Philam's action for rescission of the deeds of donation accrued because then it could be said that respondent Philam had exhausted all legal means to satisfy the trial court's judgment in its favor. Since respondent Philam filed its complaint for *accion pauliana* against petitioners on February 25, 1997, barely a month from its discovery that petitioner Khe Hong Cheng had no other property to satisfy the judgment award against him, its action for rescission of the subject deeds clearly had not yet prescribed.

A final point. Petitioners now belatedly raise on appeal the defense of improper venue claiming that respondent Philam's complaint is a real action and should have been filed with the RTC of Butuan City since the property subject matter of the donations are located therein. Suffice it to say that petitioners are already deemed to have waived their right to question the venue of the instant case. Improper venue should be objected to as follows 1) in a motion to dismiss filed within the time but before the filing of the answer;^[13] or 2) in the answer as an affirmative defense over which, in the discretion of the court, a preliminary hearing may be held as if a motion to dismiss had been filed.^[14] Having failed to either file a motion to dismiss on the ground of improper venue or include the same as an affirmative defense in their answer, petitioners are deemed to have their right to object to improper venue.

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Puno, J., on official leave.

^[1] *Rollo*, p. 106-107.

^[2] *Id.*, at 50-55.

^[3] *Id.*, at 57-60.

^[4] *Id.*, at 70-71.

^[5] *Id.*, at 44-47.

^[6] *Id.*, at 16.

[\[7\]](#) *Constancia C. Tolentino vs. CA, et al.*, 162 SCRA 66, 72.

[\[8\]](#) *Siguan vs. Lim*, 318 SCRA 725, 735, quoting *TOLENTINO, ARTHUR M., CIVIL CODE OF THE PHILIPPINES 576* (1991); citing 8 *Manresa* 756, 2 *Castan* 543-555, and 3 *Camus* 207.

[\[9\]](#) See Note 1, at 44-45.

[\[10\]](#) Tolentino, *New Civil Code, Volume IV*, 1973, ed., at p. 543.

[\[11\]](#) *Adorable vs. CA*, 319 SCRA 201, 207 (1999).

[\[12\]](#) Annex K.

[\[13\]](#) Section 1, Rule 16, 1997 Rules of Court.

[\[14\]](#) Section 6, Rule 16, 1997 Rules of Court.